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No. 713

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

THE SMOOT SAND & GRAVEL CORPORATION, *Petitioner*

v.

DISTRICT OF COLUMBIA, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Now comes petitioner, by its counsel, and respectfully asks rehearing of its petition for a writ of certiorari filed February 20, 1959 and denied April 20, 1959. Further, in the alternative, in the event the Court is of the opinion that this request for rehearing should not be granted at the present time, petitioner respectfully asks that action on such petition for

rehearing be held in abeyance pending conclusion of litigation in the cases of *District of Columbia* v. *Southern Railway Company* and *District of Columbia* v. *Evening Star Newspaper Company* now pending decision in the United States Court of Appeals for the District of Columbia Circuit.

The grounds for this petition for rehearing and the alternative request that action thereon be held in abeyance, are as follows:

1. In the *Southern Railway Company* case (CA, D.C. No. 14,477) the District of Columbia has employed an entirely different so-called apportionment formula for imposing its income tax than it has employed in the *Evening Star Newspaper Company* case (CA, D.C. Nos. 14,618 and 14,619) and both formulas are different from and antagonistic to that employed in imposing taxation upon petitioner. Because of such lack of uniformity and utterly inconsistent methods of apportionment arbitrarily employed by the District of Columbia it is believed reasonable to assume that this Court may grant certiorari in either or both the *Evening Star Newspaper Company* and the *Southern Railway Company* cases because the country's leading newspapers and major transportation systems are vitally affected by the obviously chaotic lack of uniformity in the imposition of District of Columbia income tax. This is particularly true in the light of the principles enunciated by this Court in *Northwestern States Portland Cement Company* v. *Minnesota*, 3 L. Ed. 2d 421, decided February 24, 1959, subsequent to the filing of petition for writ of certiorari in the instant case.

2. The Southern Railway Company has been taxed on the sole criteria of "costs" in disregard of sales.

The Evening Star Newspaper Company has been taxed on the sole criteria of "manufacturing, production and assembly" in disregard of sales. Petitioner has been taxed on the sole criteria of "sales" in disregard of manufacturing, production and costs.

3. The *Evening Star Newspaper Company* case was argued before the United States Court of Appeals for the District of Columbia Circuit on April 17, 1959. It is understood that the *Southern Railway Company* case will be argued before the Court of Appeals within the near future.

4. Under the terms of the tax imposing statute and the principles enunciated by this Court it would seem to be almost a certainty that the final result in the *Evening Star Newspaper Company* and the *Southern Railway Company* cases will be to require the District of Columbia to take into account consistently all factors involved in an apportionment formula to determine the amount of income fairly attributable to the District. Consequently, unless this petition for rehearing is granted, or action thereon held in abeyance pending the conclusion of such litigation in order that the instant case may be kept open, petitioner may be irreparably damaged and subjected to a serious miscarriage of justice.

CONCLUSION

For the reasons stated above, it is respectfully submitted that this petition for rehearing of order denying petition for a writ of certiorari should be granted, or, in the alternative, action thereon should be held in abeyance pending conclusion of litigation in the cases

of *District of Columbia* v. *Southern Railway Company* and *District of Columbia* v. *Evening Star Newspaper Company*.

DAVID R. SHELTON
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I, David R. Shelton, counsel for petitioner, do hereby certify that the foregoing petition for rehearing in this case is presented in good faith and not for delay and that such petition is restricted to the grounds stated above relating to intervening circumstances of substantial or controlling effect which have occurred since the petition for a writ of certiorari was filed and which will occur subsequent to denial of such petition.

DAVID R. SHELTON

May, 1959.